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**FCC REPORT TO CONGRESS
AS REQUIRED BY THE ORBIT ACT**

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FCC REPORT TO CONGRESS AS REQUIRED BY THE ORBIT ACT
NINTH REPORT

This report is submitted in accordance with Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act").¹

Section 646 states:

(a) **ANNUAL REPORTS** - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.

(b) **CONTENTS OF REPORTS** - The reports submitted pursuant to subsection (a) shall include the following:

(1) Progress with respect to each objective since the most recent preceding report.

(2) Views of the Parties with respect to privatization.

(3) Views of the industry and consumers on privatization.

(4) Impact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace.

I. Progress as to Objectives and Purposes

The purpose of the ORBIT Act is "to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat."²

The ORBIT Act, as originally passed in 2000: (1) mandates the privatization of INTELSAT and Inmarsat; (2) establishes criteria to ensure a pro-competitive privatization; (3) requires the Commission to determine whether INTELSAT, Inmarsat, and the INTELSAT spin-off New Skies Satellites N.V. ("New Skies"), have been privatized in a manner that will harm competition in the United States; (4) requires the Commission to use the privatization criteria specified in the ORBIT

¹ 47 U.S.C. § 765e (2000).

² 47 U.S.C. § 761 NOTE.

Act as a basis for making its competition determination; and (5) directs the Commission to “limit through conditions or deny” applications or requests to provide “non-core” services to, from, or within the United States if it finds that competition will be harmed.³ The Act provides for certain exceptions to limitations on non-core services in the event of such a determination. The Act also prohibits the Commission from authorizing certain “additional” services pending privatization consistent with the criteria in the Act.⁴ In addition, the Act directs the Commission to undertake a rulemaking proceeding to assure users in the United States the opportunity for direct access to the INTELSAT system. In October 2004, Congress amended the ORBIT Act, adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the initial public offering (“IPO”) requirements under Sections 621(5)(A) and (B). Additionally, in July 2005, Congress further amended the ORBIT Act, striking certain privatization criteria for Intelsat separated entities, removing certain restrictions on separated entities and successor to Intelsat and for other purposes.⁵

The Commission made its first report to Congress on its actions to implement the ORBIT Act on June 15, 2000, following enactment of the Act on March 17, 2000.⁶ The Commission made its second report on June 15, 2001;⁷ its third report on June 14, 2002;⁸ its fourth report on June 11, 2003;⁹ its fifth report on June 15, 2004;¹⁰ its sixth report on June 15, 2005;¹¹ its seventh report on June 15, 2006;¹² and its eighth report on June 15, 2007.¹³ In anticipation of this ninth

³ The Act defines “non-core” services as “services other than public-switched network voice telephony and occasional-use television” with respect to INTELSAT, and as “services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers” with respect to Inmarsat. 47 U.S.C. § 769(a)(11).

⁴ The Act defines “additional” services as “direct-to-home” (“DTH”) or direct broadcast satellite (“DBS”) video services, or services in the Ka or V bands” for INTELSAT and as “those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band” for Inmarsat. 47 U.S.C. § 769(a)(12).

⁵ Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), as amended, Pub. L. No. 107-233, 116 Stat. 1480 (2002), as amended, Pub. L. No. 108-228, 118 Stat. 644 (2004), as amended, Pub. L. No. 108-371, 118 Stat. 1752 (October 25, 2004), as amended, Pub. L. No. 109-34, 119 Stat. 377 (July 12, 2005). In the July 2005 amendment to the ORBIT Act, Congress added a requirement that the Commission submit to Congress a separate annual report that analyzes the competitive market conditions with respect to domestic and international satellite communications services. The first Annual Report was released on March 26, 2007. *FCC Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, FCC 07-34, IB Docket No. 06-67 (“Satellite Competition Report”).

⁶ *FCC Report to Congress as Required by the ORBIT Act*, 15 FCC Rcd 11288 (2000).

⁷ *FCC Report to Congress as Required by the ORBIT Act*, 16 FCC Rcd 12810 (2001).

⁸ *FCC Report to Congress as Required by the ORBIT Act*, 17 FCC Rcd 11458 (2002).

⁹ *FCC Report to Congress as Required by the ORBIT Act*, 18 FCC Rcd 12525 (2003).

¹⁰ *FCC Report to Congress as Required by the ORBIT Act*, 19 FCC Rcd 10891 (2004).

¹¹ *FCC Report to Congress as Required by the ORBIT Act*, 20 FCC Rcd 11382 (2005).

report, the Commission issued a Public Notice on March 18, 2008 inviting public comment.¹⁴ Comments were filed by Inmarsat PLC (formerly Inmarsat Group Holdings, Limited) ("Inmarsat"), and Intelsat LLC ("Intelsat").¹⁵ No reply comments were filed.

A. Commission Actions and Activities

The Commission has undertaken a number of actions required by the ORBIT Act, or related to its objectives and purposes. The Commission has taken the actions described below to ensure that INTELSAT, Inmarsat, and New Skies have been privatized in a procompetitive manner, consistent with the privatization criteria of the Act.¹⁶ The Commission has also taken actions to implement certain deregulatory measures in the Act.¹⁷

INTELSAT

- In August 2000, the Commission granted conditional licensing authority to Intelsat LLC, ("Intelsat"), a separate, privately held U.S. corporation, created by INTELSAT to hold U.S. satellite authorizations and associated space segment assets.¹⁸ Under this licensing authority, the Commission permitted Intelsat LLC's licenses to become effective upon "privatization," meaning the transfer of INTELSAT's satellites and associated assets to Intelsat and the transfer of its International Telecommunications Union ("ITU") network filings to the U.S. registry. Intelsat LLC was granted conditional U.S. authorizations for INTELSAT's existing satellites, planned satellites, and planned system modifications associated with INTELSAT's frequency assignments in the fixed satellite services ("FSS") C- and Ku- bands existing as of privatization.¹⁹

¹² *FCC Report to Congress as Required by the ORBIT Act*, 21 FCC Rcd 6740 (2006).

¹³ *FCC Report to Congress as Required by the Orbit Act*, 22 FCC Rcd 11347 (2007).

¹⁴ Public Notice, Report No. SPB-225, DA 08-593, March 18, 2008.

¹⁵ Comments of Inmarsat PLC, filed on April 1, 2008 ("Inmarsat Comments"); and Comments of Intelsat LLC, filed on April 1, 2008 ("Intelsat Comments").

¹⁶ 47 U.S.C. §§ 761, 763, 763a, 763b, 763c, and 765g.

¹⁷ 47 U.S.C. §§ 765 and 765d(1).

¹⁸ Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 15 FCC Rcd 15460, *recon. denied*, 15 FCC Rcd 25234 (2000), *further proceedings*, 16 FCC Rcd 12280 (2001) ("Intelsat Licensing Order").

¹⁹ *Intelsat Licensing Order*, 15 FCC Rcd 15460. The conventional C-band refers to the 3700-4200/5925-6425 MHz frequency bands. Intelsat is also authorized to operate in the extended C-band frequencies 3625-3700/5850-5925/6425-6650 MHz on certain satellites at certain orbital locations. In addition, Intelsat is authorized to operate in the extended C-band frequencies 3420-3625 MHz on the Intelsat-805 satellite at 55.5° W.L. for service to non-US locations. The 3420-3600 MHz portion of this frequency band is not a

- Later in 2000, INTELSAT adopted plans to distribute shares in Intelsat LLC to its Signatories on July 18, 2001.²⁰ In May 2001, the Commission found that, although the IPO required under the privatization requirements of the ORBIT Act had not yet been completed, INTELSAT would privatize in a manner consistent with the non-IPO privatization provisions of the ORBIT Act, upon completion of its plans to distribute Intelsat LLC shares to its Signatories.²¹ INTELSAT later distributed shares to its Signatories as it had planned.
- On July 28, 2003, Loral Satellite Inc. ("Debtor-in-Possession" or "DIP"), and Loral SpaceCom Corporation (DIP), and Intelsat North America, LLC filed an application seeking authority to assign five non-common carrier space station licenses to Intelsat North America. On February 11, 2004, the Commission granted, subject to conditions, authority to assign those licenses subject to certain limitations.²² Loral was providing services, such as DTH, that are "additional services" as defined by the ORBIT Act. Intelsat was granted authority to provide additional services to the then existing Loral customers.²³
- Intelsat was originally required by the ORBIT Act to conduct an IPO by October 1, 2001, in order to "substantially dilute" ownership by former INTELSAT Signatories.²⁴ Subsequently, Congress amended the ORBIT Act several times to

satellite band in the United States and is operated by Intelsat outside the United States subject to potential interference from worldwide shipborne United States military radar operations. The conventional Ku-band refers to the 11.7-12.2/14.0-14.5 GHz frequency bands. Intelsat is also authorized to operate in the extended Ku-frequency bands 10.95-11.2/11.45-11.7/12.5-12.75/13.75-14.0 GHz on certain satellites at certain orbital locations.

²⁰ Upon privatization, former INTELSAT Signatories and non-Signatory investing entities were issued shares in Intelsat Ltd. according to their March 2001 investment shares in INTELSAT.

²¹ Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 12313, 12290. (para 71) (2001) ("*Intelsat LLC ORBIT Act Compliance Order*").

²² Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Authorization and Order*, 19 FCC Rcd 2404 (Int'l Bur., 2004) ("*Loral/Intelsat Order*"). On March 4, 2004, the Commission adopted a Supplemental Order clarifying the date the Special Temporary Authority was to commence. Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Supplemental Order*, 19 FCC Rcd 4029 (Int'l Bur., 2004).

²³ *Loral/Intelsat Order*, 19 FCC Rcd at 2429 (para 65).

²⁴ Pub. L. No. 106-180, 114 Stat. 48 (2000). (Congress also gave the Commission discretion to extend the IPO deadline to no later than December 31, 2002). INTELSAT LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act, *Order*, 16 FCC Rcd. 18185 (2001).

extend the deadline for Intelsat to conduct its IPO.²⁵ Ultimately, in May 2004, Congress amended the ORBIT Act, extending Intelsat's IPO deadline to June 30, 2005.²⁶ However, in October 2004, Congress added Sections 621(5)(F) and (G) to the ORBIT Act, to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).²⁷

- On December 22, 2004, the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus Holdings Limited ("Zeus"),²⁸ a private equity group, organized under the law of Bermuda, which would acquire 100 percent of the equity and voting interests of Intelsat ("Zeus/Intelsat Transaction").²⁹
- On April 8, 2005, the Commission determined that (a) Intelsat was in compliance with the alternative certification process under Sections 621(5)(F) and 621(5)(G) of the ORBIT Act; (b) that Intelsat can forgo the requirement for an IPO and the public

²⁵ Pub. L. No. 107-233, 116 Stat. 1480 (2002) (In October 2002, Congress amended the ORBIT Act to extend Intelsat's IPO deadline to December 31, 2003, and gave the Commission the discretionary authority to further extend the deadline to no later than June 30, 2004). INTELSAT LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act, *Order*, 18 FCC Rcd. 26290 (2003).

²⁶ Public Law No. 108-228, 118 Stat. 644 (2004). (In May 2004, Congress amended the ORBIT Act to extend Intelsat's IPO deadline to June 30, 2005 and gave the Commission the discretionary authority to further extend the IPO deadline to December 31, 2005).

²⁷ Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

²⁸ Zeus Holdings Limited subsequently changed its name to Intelsat Holdings, Ltd. See footnote 29 below.

²⁹ *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, IB Docket No. 04-366, *Order and Authorization*, DA No. 04-4034, 19 FCC Rcd 24820 (Int'l Bur., WTB and OET 2004) ("*Intelsat-Zeus Order*"). In early 2005, the Commission granted authority to interpose Intelsat Subsidiary Holding Company Ltd. into the chain of ownership and modified its foreign ownership ruling to include new Bermuda-based intermediate parent Intelsat Subsidiary Holding Company Ltd. *Intelsat, Ltd.*, File No. ISP-PDR-20050203-00004, Grant of Authority, Public Notice, Report No. TEL-00884, DA No. 05-479, 20 FCC Rcd 4052, 4053 (Int'l Bur. 2005); *Intelsat North America LLC*, File No. SAT-T/C-20050203-00022, and *Intelsat LLC*, File No. SAT-T/C-20050203-00023, Grant of Authority, Public Notice, Report No. SAT-00276, DA No. 05-594 (Int'l Bur. Mar. 4, 2005), at 1-2; *Intelsat LLC*, File Nos. SES-T/C-20050203-00138, -00139 and -00140, and *Intelsat MTC LLC*, File No. SES-T/C-20050203-00141, Grant of Authority, Report No. SES-00691 (Int'l Bur. Mar. 2, 2005), at 26-27; *Intelsat USA License Corp.*, File No. ITC-T/C-20050418-00279, *Intelsat General Corporation*, File No. ITC-T/C-20050418-00280, and *Intelsat MTC LLC*, File No. ITC-T/C-20050418-0281, Grant of Authority, Public Notice, Report No. TEL-00931, DA No. 05-2192 (Int'l Bur. 2005), at 3-4. During 2005, Zeus Holdings Limited changed its name to Intelsat Holdings, Ltd. See, e.g., *Intelsat USA License Corp.*, Report No. TEL-00931, at 3.

listing of securities; and that (c) Intelsat was no longer subject to the provisions of Section 602 that prohibited Intelsat from providing "additional services."³⁰

- On May 24, 2005, the Commission granted Intelsat LLC's request for approval of the *pro forma* assignments of space station authorizations and related Tracking, Telemetry and Control ("TT&C") earth station licenses, from Intelsat LLC to Intelsat North America LLC.³¹
- On June 19, 2006, the Commission approved the merger of Intelsat Holdings, Ltd. with PanAmSat Holding Corporation ("PanAmSat").³² The FCC action approving the transaction granted applications for the transfer of control, to Intelsat, of Commission-issued licenses and authorizations held by PanAmSat and its subsidiaries. Upon consummation of the transaction on July 3, 2006, PanAmSat became a wholly-owned subsidiary of Intelsat continuing operation as a separate corporate entity.
- On July 10, 2006, the International Telecommunications Satellite Organization (ITSO)³³ filed a petition seeking modification of certain space station licenses held by Intelsat North America.³⁴ The Commission placed ITSO's petition on *Public Notice* on July 18, 2006.³⁵ The State Department, after consultations with NTIA, filed a

³⁰ Intelsat, Ltd. Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, FCC 05-86, IB Docket 05-18, 20 FCC Rcd. 8604 ("Intelsat Certification Order").

³¹ Intelsat LLC, Assignor, and Intelsat North America LLC, Assignee, Applications for Consent to Pro Forma Assignment of Space Station Authorizations and Related TT&C Earth Station Licenses, File Nos., SAT-ASG-20050418-00084, SAT-ASG-20050418-00085, SES-ASG-20050502-00519, SES-ASG-20050502-00520, SES-ASG-20050502-00562, DA-05-1545, Public Notice, Report No. SAT-00294, March 27, 2005.

³² Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, PEOP PAS, LLC, Transferors, Intelsat Holdings, LTD, Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., *Memorandum Opinion and Order*, 21 FCC Rcd 7368 (2006) ("Intelsat-PanAmSat Order").

³³ ITSO is the residual, post-privatization intergovernmental organization, governed by international agreement ("ITSO Agreement") that oversees the Intelsat public service obligations established as part of the 2001 privatization. See Agreement Relating to the International Telecommunications Satellite Organization (ITSO Agreement) (Nov. 17, 2000), Art. III(a) ("... the main purpose of ITSO is to ensure, through the Public Services Agreement, that the Company provides, on a commercial basis, international public telecommunications services, in order to ensure performance of the Core Principles."), available at <http://www.itso.int>. The United States is a party to the ITSO Agreement, with the State Department serving as the U.S. representative. See *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7395, ¶ 53.

³⁴ Petition of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 06-137 (filed July 10, 2006) ("Petition").

³⁵ Petition of the International Telecommunications Satellite Organization Under Section 316 of the Act, IB Docket No. 06-137 and File No. SAT-MS-20060710-00076, *Public Notice*, DA 06-1460, 21 FCC Rcd

letter recommending that the Commission impose two of the three conditions proposed by ITSO.³⁶ ITSO and Intelsat filed comments in the proceeding ultimately including an October 19, 2007 joint filing by ITSO and Intelsat North America asking the Commission to condition the subject licenses with the two conditions recommended by the State Department. Subsequently, on November 23, 2007, the Commission pursuant to Section 316 of the Communications Act of 1934, as amended, issued an order proposing to impose the two conditions.³⁷ On February 18, 2008, the Commission released an order modifying the relevant Intelsat North America licenses.³⁸

- On December 19, 2007, the Commission granted a series of applications filed by Intelsat Holdings, Ltd. and Serafina Holdings Limited ("Serafina") seeking consent to transfer of control of Intelsat Holdings, Ltd., and its six subsidiary licensees from Intelsat's existing control group of four private equity firms to Serafina, a then newly-formed Bermuda company indirectly controlled by BC Partners Holdings Limited, a U.K.-based investment firm organized under the laws of Guernsey, a British Crown Dependency.³⁹ Serafina and Intelsat subsequently consummated the proposed transaction.

7923 (Int'l Bur. 2006). The Bureau simultaneously sent a letter to the State Department seeking Executive Branch comments and advice on the petition.

³⁶ Letter from Ambassador David A. Gross, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, IB Docket No. 06-137 (dated Mar. 15, 2007) at 1, 3-4 (recommending conditions that (1) explicitly obligate Intelsat to remain a signatory to the Public Services Agreement between Intelsat and ITSO approved by the ITSO Twenty-fifth Assembly of Parties and (2) provide, for licensing purposes, that no entity can be considered a successor-in-interest to Intelsat under the ITSO Agreement unless the entity has undertaken to perform the obligations of the Public Services Agreement). *See also*, Letter from Steven W. Lett, Deputy United States Coordinator, International Communications and Information Policy, U.S. Department of State to Helen Domenici, Chief, International Bureau, Federal Communications Commission, IB Docket No. 06-137 (filed Feb. 1, 2008).

³⁷ Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended, IB Docket No. 06-137, *Order Proposing Modification*, DA 07-4715, 22 FCC Rcd 20093 (Int'l Bur. 2007). On January 10, 2008, Intelsat North America, while stating that it did not object to the proposed conditions in principle, filed a Limited Protest to Seek Clarification as to the circumstances in which the conditions would apply. Intelsat North America Limited Protest to Seek Clarification, IB Docket No. 06-137 (filed Jan. 10, 2008) at 1-2.

³⁸ In the Matter of Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended, IB Docket No. 06-137, *Order of Modification*, DA 08-444, 23 FCC Rcd 2764 (Int'l Bur. 2008).

³⁹ In the Matter of Intelsat Holdings, Ltd., Transferor, and Serafina Holdings Limited, Transferee, Consolidated Application for Consent to Transfer Control of Holders of Title II and Title III Authorizations, IB Docket No. 07-181, *Memorandum Opinion and Order*, FCC 07-220, 22 FCC Rcd 22151 (2007).

- Since the June 15, 2007 Eighth Annual Report, Intelsat has filed a number of requests for license modifications. The Commission has reviewed these requests and acted on them consistent with the United States licensing process.⁴⁰

Inmarsat

- Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The ORBIT Act specified a number of criteria for determining whether Inmarsat's privatization is pro-competitive. On October 9, 2001, the Commission released an Order in which it concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of Sections 621 and 624 of the ORBIT Act.⁴¹
- In its decision, having found that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the Act,⁴² the Commission granted Comsat Corporation;

⁴⁰ Intelsat North America LLC, Request for Special Temporary Authority to Drift the INTELSAT 601 Satellite from 63.65° E.L. to 47.5° E.L., where it would operate pursuant to a German authorization, File No. SAT-STA-20061102-00128, Order released on October 31, 2007 (DA 07-4482); Intelsat North America, LLC, Request for Special Temporary Authority to Drift the INTELSAT 602 from 150.5° E.L. to 157° E.L., File No. SAT-STA-20070511-00070 (grant stamp by Andrea Kelly, Policy Branch Chief on May 17, 2007, with conditions); Intelsat North America, LLC, Application for Modification of the License for the INTELSAT 602 satellite in order to relocate the satellite from 150.5° E.L. to 157° E.L., File No. SAT-MOD-20070511-00071 (grant stamp by Andrea Kelly, Policy Branch Chief, on July 20, 2007); Intelsat North America, LLC, Request for Special Temporary Authority for 60 days to begin operating INTELSAT 602 in inclined orbit at 157° E.L., File No. SAT-STA-20070605-00077 (grant stamp by Andrea Kelly, Policy Branch Chief on June 21, 2007); Intelsat North America LLC, Requests for Special Temporary Authority to continue to conduct tracking, telemetry, and control operations during the relocation of INTELSAT 602 from 150.5 E.L. to 157 E.L. for a period of thirty days and also authority to temporarily operate INTELSAT 602 at 157 E.L. for a period of sixty days, File No. SAT-STA-20070605-00077 (grant stamp by Andrea Kelly, Policy Branch Chief on June 21, 2007); Intelsat North America, LLC, Request for Modification of the License for the INTELSAT 709 satellite, File No. SAT-MOD-20060901-00095, and underlying Requests for Special Temporary Authority, File Nos. SAT-STA-20060901-00094 and SAT-STA-20061101-00127, to allow it to provide fixed-satellite service in the Middle East in the 11.7-11.95 GHz frequency band from the 85.15 E.L. orbital location, in order to support U.S. Government operations in the Middle East, ORDER released on July 6, 2007 (DA 07-3055). Additionally, as mentioned in last year's report, in Intelsat North America LLC filed four applications to operate in the 17/24 GHz BSS band. In January 2008, Intelsat North America LLC filed subsequent amendments to its pending applications. Intelsat North America LLC, Application for Authority to Construct, Launch and Operate a Direct Broadcast Satellite system comprised of four satellites in the 17 GHz and 25 GHz Bands, IBFS File Nos. SAT-LOA-20050210-00028, SAT-AMD-20051118-00241, SAT-AMD-20080114-00011 (Call Sign: S2659); SAT-LOA-20050210-00029, SAT-AMD-20051118-00240, SAT-AMD-20080114-00012 (Call Sign: S2660); SAT-LOA-20050210-00030, SAT-AMD-20051118-00239, SAT-AMD-20080114-00009 (Call Sign: S2661); and SAT-LOA-20050210-00031, SAT-AMD-20051118-00238, SAT-AMD-20080114-00008 (Call Sign: S2662).

⁴¹ Comsat Corporation et. al., *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) ("Inmarsat ORBIT Act Compliance Order").

⁴² 47 U.S.C. § 761(a), which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act.

Stratos Mobile Networks, LLC; SITA Information Computing Canada, Inc.; Honeywell, Inc.; Marisat Communications Network, Inc.; and Deere & Company regular earth station authority to use certain Inmarsat satellites for communications services to, from, or within the United States.

- The Commission also granted several other earth station applications to communicate with Inmarsat's satellites as a point of communication.⁴³
- The ORBIT Act originally required Inmarsat to conduct an IPO no later than October 1, 2000.⁴⁴ Subsequently, Congress amended the ORBIT Act several times to extend the deadline for Inmarsat to conduct an IPO.⁴⁵ Ultimately, in October 2004, Congress amended the ORBIT Act, extending the IPO deadline until June 30, 2005 and adding Sections 621(5)(F) and (G) to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).⁴⁶
- On June 14, 2005, the Commission determined that Inmarsat was in compliance with the alternative certification process under Sections 621(5)(F) and 621(5)(G) of the ORBIT Act, that Inmarsat could forgo the requirement for an IPO and the public listing of securities, and that Inmarsat was no longer subject to the provisions of Section 602 that prohibited Inmarsat from providing additional services.⁴⁷
- Beginning in 2005, resellers of Inmarsat satellite services filed applications to continue or, in some cases, to commence operations of mobile earth terminals ("METs") and gateway land earth stations ("LESS") in the United States via various Inmarsat satellites not covered by existing coordination agreements for the L-band

⁴³ See e.g., Exxon Communications Company, SES-LIC-20040413-00548 (granted August 31, 2004 to access the INMARSAT Ltd. 1 satellite at 15.5° W.L., the INMARSAT Ltd. 3 satellite at 178° E.L., and the INMARSAT Ltd. 3 satellite at 54° W.L.); Telenor Satellite, SES-MOD-20041029 (granted March 4, 2005 to access INMARSAT Ltd. 3 satellite at 15.5° W.L., INMARSAT Ltd. 3 satellite at 54° W.L., INMARSAT-2 AOR-EAST satellite at 17° W.L., and INMARSAT-2 AOR-WEST satellite at 98° W.L.).

⁴⁴ Pub. L. No. 106-180, 114 Stat. 48 (2000).

⁴⁵ On June 30, 2003, Congress extended Inmarsat's IPO deadline to June 30, 2004, and gave the Commission discretion to further extend this deadline to no later than December 31, 2004. ORBIT Technical Corrections Act of 2003, Pub. L. No. 108-39, § 763, 117 Stat. 835 (2003). Inmarsat Ventures Limited Request for Extension of Time under Section 621(5) of the Communications Satellite Act of 1962, as amended by the Open-Market Reorganization for the Betterment of International Telecommunications Act, *Order*, 19 FCC Rcd 11387 (2004).

⁴⁶ Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

⁴⁷ Inmarsat Group Holdings Limited Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, IB Docket 04-439, FCC 05-126 (2005) ("*Inmarsat Certification*"). Section 681(2) of the ORBIT Act defines "additional services" for Inmarsat as the non-maritime and non-aeronautical services in the 1.5 and 1.6 GHz band on planned satellites in the 2 GHz band. See Pub. L. 106-180 § 602(a) (precluding Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act).

over North America, including the recently launched Inmarsat I-4F2 satellite.⁴⁸ These applications were opposed by Mobile Satellite Ventures Subsidiary LLC ("MSV"), the U.S.-licensed Mobile Satellite Service ("MSS") operator in the L-band.

- In order to permit continuity of service to existing Inmarsat customers and to allow use of new Broadband Global Area Network ("BGAN")⁴⁹ services in support of emergency operations, the Commission granted limited authority to resellers to operate while their applications for permanent authorization were under consideration. In January 2006, the Commission granted special temporary authority to resellers for continuation of MET operations via one of Inmarsat's newly launched next generation Inmarsat 4 ("I-4") satellites, the I-4F2 satellite. The Commission had previously authorized these operations via the Inmarsat 3F4 satellite.⁵⁰ In May 2006, the Commission granted special temporary authority to certain resellers to provide Inmarsat's new BGAN in the United States via the I-4F2 satellite.⁵¹ Grants of special temporary authority to provide BGAN services were made to additional resellers in June 2006 and December 2007.⁵² In 2006 and 2007, pursuant to Section 1.62 of the Commission's rules, operations authorized by these special temporary authority have continued, where requested, since the initial STA grants.⁵³
- On December 21, 2007, Inmarsat and MSV signed a "Spectrum Coordination and Cooperation Agreement" that resolved outstanding differences between the parties

⁴⁸ The first two satellites of Inmarsat's I-4s were launched in 2005. See Inmarsat website, "About Inmarsat: Our Satellites", available online at http://www.inmarsat.com/About/Our_satellites/default.aspx.

⁴⁹ The BGAN service is a mobile or portable application that supports both Internet protocol ("IP") packet-switched data and circuit-switched applications. Inmarsat indicates that the BGAN data transmission rates will allow customers to access to e-mail, local area networks, the Internet, intranet/extranet, video conferencing services, video-on-demand, and voice communications (including Voice over IP) from almost anywhere in the world.

⁵⁰ Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00788 (rel. Jan. 25, 2006).

⁵¹ Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00821 (rel. May 17, 2006).

⁵² Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00835 (rel. July 5, 2006); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00990 (rel. December 19, 2007).

⁵³ Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00907 (rel. March 7, 2007); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00909 (rel. March 14, 2007); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00913 (rel. March 28, 2007); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00923 (rel. May 2, 2007); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00927 (rel. May 16, 2007); and Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00929 (rel. May 23, 2007). See also 47 C.F.R. §1.62 (a)(1).

regarding use of the L-band.⁵⁴ According to the parties, the agreement addresses operations in the L-band in North America, including re-banding of spectrum, coordination of next generation Inmarsat and MSV satellites, resolution of pending regulatory issues in the United States and Canada, and greater system technical flexibility.

- On March 3, 2008, Inmarsat filed a petition for declaratory ruling seeking administrative changes in the way the Commission specifies authorized points of communication in licenses for L-band MSS user terminals using Inmarsat space stations. Specifically, Inmarsat proposes that the resellers L-band user terminal licenses include authority to communicate with all Inmarsat space stations that have been approved for U.S. service in the L-band by listing "ISAT" as the point of communication in the license. The term "ISAT" would refer to all Inmarsat space stations that are contained on a list to be maintained by the Commission and would provide authority to communicate with future Inmarsat L-band space stations once those space stations have been reviewed and granted access to the U.S. market. The petition was placed on public notice on April 2, 2008. The comment period ended on May 16, 2008. No party opposed Inmarsat's petition.
- On March 26, 2008, the Commission reached government-to-government satellite coordination agreements with the United Kingdom and Canada, based upon the "Spectrum Coordination and Cooperation Agreement" of Inmarsat and MSV. In light of these developments, on March 27, 2008, the Commission granted nearly all pending applications for regular authority to continue existing services via Inmarsat satellites.⁵⁵ The Commission also granted one reseller's applications for regular authority to provide new BGAN services via the I-4F2 satellite on April 1, 2008.⁵⁶

New Skies Satellites

- New Skies is the Netherlands-based INTELSAT spin-off, created in 1998 as INTELSAT's first step toward privatization. On March 29, 2001, the Satellite Division added four satellites operated by New Skies to the Commission's Permitted Space Station List⁵⁷ ("Permitted List") with conditions to remove secondary status

⁵⁴ Press Release, "SkyTerra, Mobile Satellite Ventures and Inmarsat Sign Spectrum Coordination and Cooperation Agreement," Dec. 21, 2007, available online at <http://www.msvlp.com/media/press-releases-view.cfm?id=158&yr=2007>.

⁵⁵ Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-01021 (rel. April 2, 2008).

⁵⁶ *Id.*

⁵⁷ The Permitted List denotes all satellites and services with which U.S. earth stations with "routinely" authorized technical parameters operating in the conventional C- and Ku-bands ("ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic International Satellite Service in the United States, *First Order on Reconsideration*, 15 FCC Rcd 7207 (1999).

requirements for certain New Skies' satellites.⁵⁸ This action enabled New Skies to provide satellite services to, from, and within the United States on a full-term basis.⁵⁹

- On June 25, 2004, the Commission granted an application to transfer control of Commission licenses and authorizations held by New Skies Satellites N.V. and New Skies Networks, Inc. to New Skies Satellites B.V.⁶⁰
- On January 6, 2006, New Skies Satellites Holdings Ltd. and SES GLOBAL S.A. filed an application seeking approval to transfer control of Commission authorizations held by New Skies Networks, Inc. ("NSN") to SES GLOBAL.⁶¹ On March 29, 2006, the Commission approved the transfer of control of NSN licenses for six non-common carrier earth stations for communication with non-U.S. licensed satellites that have been added to the Commission's Permitted List.⁶² The Commission also approved the transfer of control of three non-U.S. satellites operated by New Skies that the Commission has authorized to provide service to the United States pursuant to the Permitted List.⁶³ The merger was consummated on March 30, 2006.
- Since privatization, the Commission also granted several requests from earth station operators to add New Skies satellites as a point of communication.⁶⁴

⁵⁸ New Skies Satellites, N.V., DA 01-513, *Order*, 16 FCC Rcd. 7482 (Int'l Bur., Sat. and Rad. Div., rel. March 29, 2001).

⁵⁹ New Skies Satellites, N.V., *Petition for Declaratory Ruling*, *Order*, 16 FCC Rcd 6740 (Sat. and Radio Div., 2001).

⁶⁰ Application of New Skies Satellites N.V. (Transferor) and New Skies Satellites B.V. (Transferee) Transfer Control of FCC Licenses and Authorizations Held by New Skies Satellites N.V. and New Skies Networks, Inc., 19 FCC Rcd 21232 (2004).

⁶¹ File No. SES-T/C-20060106-00013, as amended by File No. SES-AMD-20060320-00471 ("Transfer of Control Application"). See also Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for SES GLOBAL, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 06-23 (filed Mar. 21, 2006) (providing revised Exhibit E to File No. SES-T/C-20060106-00013 ("March 21 Section 1.65 Letter")).

⁶² Permitted List, available at <http://www.fcc.gov/ib/sd/se/permitted.html>.

⁶³ New Skies Satellites Holdings LTD, Transferor, and SES Global S.A., Transferee, Applications to Transfer Control of Authorizations Held By New Skies Networks, Inc. and Notification of Change to Permitted Space Station List, DA 06-699, IB Docket No. 06-23, 21 FCC Rcd. 3194, *Public Notice* (Int'l Bur. approved the transfer of control with conditions) (2006).

⁶⁴ The applications granted during the past year that list New Skies satellites as a point of communication are as follows: (1) File No. SES-MFS-20070513-00639, Call Sign: E040445, RAINBOW NETWORK COMMUNICATIONS, granted on June 26, 2007; (2) File No. SES-MOD-20070314-00351, Call Sign: KA313, Vizada Satellite, Inc., granted on July 26, 2007; (3) File No. SES-MFS-20071101-01487, Call Sign: E000584, ABS-CBN International, Inc., granted on January 23, 2008; (5) File No. SES-LIC-20080111-00047, Call Sign: E080011, Intelsat North America LLC, granted on February 19, 2008; and (6)

- In 2007, earth station operators with ALSAT authority have continued to have authority to access New Skies Satellites on the Commission's Permitted List.⁶⁵ Further, the Commission granted one earth station specific authority to communicate with a New Skies satellite.⁶⁶

Status of Comsat

- The ORBIT Act terminated the Communications Satellite Act of 1962's ownership restrictions on COMSAT Corporation ("Comsat"). As a result, Lockheed Martin and Comsat jointly filed an application with the Commission for transfer of control of Comsat's various licenses and authorizations. On July 31, 2000, the Commission found that Lockheed Martin's purchase of Comsat was in the public interest and authorized Comsat to assign its FCC licenses and authorizations to a wholly-owned subsidiary of Lockheed Martin Corporation.⁶⁷
- On December 18, 2001, the Commission granted Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation, together with Telenor Satellite Services Holdings, Inc., Telenor Satellite, Inc., and Telenor Broadband Services AS's request to assign certain Title II common carrier authorizations and Title III radio licenses held by COMSAT to Telenor.⁶⁸ The

File No. SES-MFS-20071221-01739, Call Sign: E880772, Sure Shot Transmissions, Inc., granted on March 11, 2008.

We note those earth stations that meet the Commission's two-degree spacing technical requirements and operate in the conventional C- or Ku frequency bands can obtain ALSAT authority which allows the earth station to communicate with any satellite on the Commission's Permitted List. *See* note 45 above. Currently, New Skies Satellites has three space stations on the Permitted List (NSS-806 @ 40.5° W.L., NSS-5 @ 177° W.L. and NSS-7 @ 22° W.L.). Therefore, of the more than 8360 earth stations that have ALSAT authority, any one of these earth stations can communicate with these New Skies satellites, in the conventional C-or Ku- frequency bands, without any further authorization.

⁶⁵ *See* note 62 above.

⁶⁶ An earth station must seek specific authority to communicate with a space station if the earth station does not meet the technical requirements for an ALSAT designation and/or if the earth station seeks to communicate with a satellite in frequency bands other than the conventional C and Ku-frequency bands. One example of an authorization granting specific access to a New Skies' Space Station is: Newcom International, Inc., SES-MOD-20070223-00275, authority granted on April 10, 2007 to communicate with the NSS-7 satellite at 22° W.L. orbital location. *See also* note 62 above.

⁶⁷ Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214, *Order and Authorization*, 15 FCC Rcd 22910 (2000), *erratum*, 15 FCC Rcd 23506 (Sat. and Radio. Div., 2000); *recon. denied*, 17 FCC Rcd 13160 (2002).

⁶⁸ Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land MobileRadio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the

assignment was in connection with Telenor's acquisition of Comsat Mobile Communications ("CMC"), a business unit of COMSAT Corporation. On January 11, 2002, Telenor completed its purchase of substantially all of the assets of CMC, and all of CMC's licenses and authorizations were transferred to Telenor pursuant to Commission authorization.⁶⁹

- On October 25, 2002, the Commission granted Comsat and Lockheed Martin jointly filed applications to assign four non-common carrier earth station licenses and an Experimental License to Intelsat LLC.⁷⁰
- On May 28, 2004, COMSAT General Corporation, Lockheed Martin, COMSAT New Services, Inc. and Intelsat LLC and Intelsat MTC LLC filed a series of applications associated with a transaction by which Intelsat, Ltd. would acquire Lockheed Martin's COMSAT General businesses.⁷¹ On October 27, 2004, the Commission granted the applications, subject to compliance by Intelsat LLC, Intelsat MTC LLC and Intelsat Government Solutions Corporation with the terms of the Intelsat Commitment letter with the Criminal Division of the U.S. Department of Justice, the U.S. Department of Homeland Security, and the Federal Bureau of Investigation.⁷² On October 29, 2004, the transaction was completed.⁷³

Direct Access

- Section 641(a) of the ORBIT Act requires that users and service providers be permitted to obtain Level 3 direct access to INTELSAT capacity.⁷⁴ Previously, the

Communications Act, *Order and Authorization*, 16 FCC Rcd 22897 (2001), *erratum*, 17 FCC Rcd 2147 (Int'l Bur. 2002).

⁶⁹ Comments Invited on Telenor Satellite Services Holdings, Inc. Petition for Declaratory Ruling on Inapplicability of Cost Accounting Requirements, *Public Notice*, 17 FCC Rcd 2444 (2002).

⁷⁰ Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors, and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC and Intelsat USA License Corp., Application for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling, IB Docket No. 02-87, *Order and Authorization*, DA 02-2254, 17 FCC Rcd 27732, (Int'l Bur. & Wireless Tel. Bur. 2002) ("*Lockheed/Comsat/Intelsat Order*").

⁷¹ Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC, Seek FCC Consent to Assign Licenses and Authorizations and a Declaratory Ruling on Foreign Ownership, Pleading Cycle Established, *Public Notice*, IB Docket No. 04-235, 19 FCC Rcd 11390 (2004).

⁷² Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership, Authorizations Granted, *Public Notice*, IB Docket No. 04-235, 19 FCC Rcd 21216 (2004).

⁷³ *Intelsat, Ltd. Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934 for the fiscal year ended December 31, 2004*, at 94.

⁷⁴ 47 U.S.C. § 765(a).

Commission decided in a rulemaking proceeding, that Level 3 direct access is in the public interest.⁷⁵ The concept of direct access became moot with INTELSAT privatization on July 18, 2001, because Intelsat LLC, as a private company, does not have Signatories.

- Prior to INTELSAT's privatization, the Commission implemented the requirement in Section 641(b) of the ORBIT Act that the Commission complete a rulemaking "to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment directly from INTELSAT to meet their service or capacity requirements."⁷⁶ In September 2000, the Commission released a Report and Order requiring Comsat and direct access customers to negotiate commercial solutions if possible to ensure that sufficient opportunity is available for parties to negotiate commercial solutions.⁷⁷
- On March 13, 2001, Comsat submitted a report detailing the results of its negotiations and maintaining that direct access opportunities are increasing for those who want them. For example, the negotiations resulted in a commercial agreement between Comsat and WorldCom. The Commission placed Comsat's report on public notice, including Comsat's request to terminate the proceeding.⁷⁸ With INTELSAT's privatization and Intelsat Ltd.'s purchase of Comsat,⁷⁹ on November 21, 2002, the Commission released an Order that concluded that the underlying basis for Section 641(b) no longer existed, and terminated the proceeding.⁸⁰ In terminating the proceeding, the Commission noted that the termination does not imply any abdication of the Commission's appropriate oversight of Intelsat Ltd., and that as a U.S. licensee, Intelsat Ltd., will be subject to the same Commission oversight as any similarly-situated company authorized to provide services in the United States.

Regulatory Fees

- The ORBIT Act authorizes the Commission "to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar

⁷⁵ Direct Access to the INTELSAT System, *Report and Order*, IB Docket No. 98-192, 15 FCC Rcd 15703 (1999). Level 3 direct access permits non-signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories without having to use a Signatory as a middleman.

⁷⁶ 47 U.S.C. § 765(b).

⁷⁷ Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, *Report and Order*, IB Docket No. 00-91, 15 FCC Rcd 19160 (2000).

⁷⁸ Public Notice, Report No. SPB-166, April 6, 2001.

⁷⁹ On October 25, 2002, the Commission approved the assignment of various earth station licenses, private land mobile radio licenses and international 214 applications from Comsat Corporation to Intelsat, Ltd.

⁸⁰ Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, *Order*, IB Docket No. 00-91, 17 FCC Rcd 24242 (2002).

services.”⁸¹ On July 10, 2000, the Commission released an Order concluding that Comsat should pay a proportionate share of the fees applicable to holders of Title III authorizations to launch and operate geosynchronous space stations.⁸² Consistent with past decisions, the Commission stated that the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities and are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat’s non-Intelsat satellites, and earth station fees.⁸³ In 2002, the Circuit Court of Appeals for the District of Columbia held that the Commission’s actions to impose regulatory fees on Comsat were justified on the basis that the underlying policy of Section 9 of the Communications Act of 1934, as amended, favoring recovery of regulatory costs gave the Commission good reason to require Comsat to bear its proportionate share of space station fees.⁸⁴

- Post-privatization, Intelsat, as a U.S. licensee, has paid the required regulatory fees mandated by Section 9 of the Communications Act 1934.

B. Status of INTELSAT Privatization

Intelsat privatized and became a U.S. licensee, as of July 18, 2001, transferring its assets to a commercial corporation. Pursuant to international agreement, an intergovernmental organization known as the International Telecommunications Satellite Organization (“ITSO”) remained. ITSO, through a “Public Services Agreement” with Intelsat LLC, monitors the performance of the company’s public service obligations to maintain global connectivity and global coverage, provide non-discriminatory access to the system, and honor the lifeline connectivity obligation to certain customers, specifically, those customers in poor or underserved countries that have a high degree of dependence on Intelsat LLC.⁸⁵ Under these commitments, the privatized Intelsat LLC has made capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years. ITSO has no operational or commercial role.

Upon privatization, substantially all of INTELSAT’s operational assets and liabilities were transferred to several companies within an affiliated group with a holding company structure. The companies have created fiduciary Boards of Directors and based on the record before us, the selection procedure for members of the Board of Directors of Intelsat, Ltd. has resulted in a board that is compliant with the ORBIT Act. In addition, our review of the record

⁸¹ 47 U.S.C. § 765a(c). A 1999 decision of the United States Court of Appeals for the District of Columbia Circuit in *PanAmSat Corp. v. FCC*, 198 F.3d 890 (D.C. Cir. 1999), set aside and remanded the Commission’s 1998 fee order, which did not assess a fee against Comsat.

⁸² *In re Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, MD Docket No. 00-58, 15 FCC Rcd 6533 (para. 17) (2000).

⁸³ *Id.*

⁸⁴ See *Comsat Corporation vs. FCC and PanAmSat Corp.*, 283 F.3d 344 (D.C. Cir. 2002).

⁸⁵ *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E FINAL W/11/00, para. 6-8 (Nov. 27, 2000) (“2000 Assembly Decision”).

before us supports our finding that privileges and immunities enjoyed by the pre-privatized INTELSAT had been terminated consistent with the requirements of the ORBIT Act. The licensed companies have licenses through notifying Administrations in countries (the United States and the United Kingdom) that have effective competition laws and have commitments under the WTO Agreement that include non-discriminatory access to their satellite markets.⁸⁶ These companies are subject to U.S. or U.K. licensing authorities and conduct satellite coordinations according to ITU procedures under the auspices of these authorities.

Additionally, as detailed above, at the end of 2004 the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus, and the transaction was consummated in 2005.⁸⁷ Also in 2005, the Commission determined that Intelsat's certification complied with the ORBIT Act and it could forgo an IPO and listing of securities.⁸⁸ Thus, the Commission concluded that the provisions relating to additional services under Section 602 of the ORBIT Act were no longer applicable to Intelsat.⁸⁹

II. Views of INTELSAT Parties on Privatization

The Commission, in response to the Public Notice for this Report, has not received any views directly from the INTELSAT Parties⁹⁰ regarding privatization.

III. Views of Industry and Consumers on Privatization

Intelsat and Inmarsat filed comments in response to the Commission's March 18, 2008 public notice inviting comments related to the development of this Report to Congress.⁹¹ The Commission has not received any comments from other industry members or consumers regarding privatization.

Intelsat Privatization Comments

Intelsat contends that as a privatized entity it continues to face intense competition in the commercial environment.⁹² This competition has come from other providers of satellite services

⁸⁶ *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Supplemental Information, at 3 (August 17, 2001).

⁸⁷ See page 5-6 above.

⁸⁸ See page 6 above.

⁸⁹ *Id.*

⁹⁰ The INTELSAT Parties are nations for which the INTELSAT agreement has entered into force. 47 U.S.C. § 769(a)(4)(A). Following privatization, the ITSO Agreement defines "Party" to mean a State for which the ITSO Agreement has entered into force or has been provisionally applied. See Agreement Relating to the International Telecommunications Satellite Organization, As Amended by the Twenty-Fifth (Extraordinary) Assembly of Parties in Washington, D.C. (Nov. 17, 2000), at Art. I(p).

⁹¹ See footnote 13 above. Copies of these comments are enclosed in this Report.

⁹² Intelsat Comments at 1-2.

as well as terrestrial sources such as fiber optic cable, broadband-enabled IP applications, and terrestrial wireless platforms.⁹³ Intelsat indicates that it has responded and will continue to properly respond to these competitive market forces. Indeed, Intelsat notes that it has had a positive impact on the global marketplace for communications services.⁹⁴ Its satellite fleet has grown from 51 to 54 satellites, and it has become a leader in the digital delivery of video content, transmission of corporate data, and provision of government communications solutions.⁹⁵

Inmarsat Privatization Comments

Inmarsat notes that in June 2005, the Commission determined that Inmarsat's privatization was consistent with the non-IPO criteria of the ORBIT Act, as amended, in part, because the Commission found that Inmarsat had effectuated a substantial dilution of former Inmarsat Signatories' financial interests in the company. Inmarsat further states that shortly after the Commission determined that Inmarsat met the applicable ORBIT Act criteria, Inmarsat completed a successful IPO, resulting in a listing of Inmarsat shares on the London Stock Exchange. As a result of this IPO, Inmarsat contends that the remaining interests of former Inmarsat Signatories and foreign government entities that owned Inmarsat shares have been diluted.⁹⁶

Inmarsat asserts that it continues to face substantial competition in the market place from a variety of different sources, and its response has included investing in new technologies for the diverse mobile satellite service customer base.⁹⁷ Inmarsat notes that it has invested more than \$1.5 billion in the deployment of the new I-4 satellite network that is currently providing innovative MSS services to the United States and globally, on one of the most advanced mobile commercial communications satellites in orbit.⁹⁸ Inmarsat indicates that it expects to launch the third of its fourth generation satellites, the I-4F3, in the near future, completing world-wide coverage for its broadband capabilities.⁹⁹ Inmarsat states that in addition, it is constructing and has sought Commission authorization for a Satellite Access Station in Paumalu, Hawaii to connect user terminal traffic to the public switched network and the Internet.¹⁰⁰

Finally, Inmarsat asserts that its effort to remain competitive in the dynamic MSS market also led it to design its I-4 fleet to support a new class of novel IP-based communications, including BGAN service. Inmarsat notes that its BGAN services provide high speed voice and broadband services at almost half a megabit per second. Inmarsat notes that in 2007 it launched

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Specifically, Inmarsat notes that after the IPO, no former Inmarsat Signatory owns five percent or more of the company and the aggregate ownership by foreign governments is nominal. Inmarsat Comments at 2.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

companion BGAN services for aeronautical and maritime customers (SwiftBroadband and FleetBroadband). Inmarsat plans to introduce world-wide Global Satellite Phone Service over its 14 geostationary fleet with a modernized handset. Inmarsat indicates that the handset is being optimized to operate over the I-4 network and it will support both MSS and Global System for Mobile communications service. Inmarsat notes that it intends to make the handset available in the United States in 2009.¹⁰¹

IV. Impact of Privatization

Section 646 requires that the Commission report on the impact of privatization on U.S. industry, jobs, and industry access to the global market.

INTELSAT's privatization from an intergovernmental organization to a fully commercial operation has enabled it to more effectively compete to provide services to U.S. commercial and governmental customers. Privatization has enabled Intelsat to compete freely for U.S. satellite business opportunities, thereby increasing competition in the U.S. market and encouraging the development of service offerings to U.S. customers.

Inmarsat's privatization also appears to have had a positive impact on the domestic market.¹⁰² With privatization, Inmarsat has continued to invest in new technologies for mobile satellite service customers. In 2008, Inmarsat will launch its third satellite in the I-4 satellite network. The third satellite will complete worldwide coverage for Inmarsat's I-4 network, which provides broadband service, including BGAN.

Pursuant to the United States' obligations as the Notifying Administration to the ITU for Intelsat's fixed satellite service C-and Ku-band frequency assignments transferred at privatization, the Commission has participated in a number of international satellite coordination negotiations as Intelsat's licensing Administration. Since the 2007 Orbit Act Report to Congress, the Commission has participated in coordination meetings with Argentina on behalf of Intelsat and a number of other U.S. licensees. Over the past reporting period, satellite coordination agreements have been concluded via correspondence with a number of Administrations including Egypt, Japan, Kingdom of Thailand, the Islamic Republic of Pakistan, the Islamic Republic of Iran, the Republic of Korea, the Russian Federation, and the United Kingdom.

The United States has a coordination process whereby U.S. operators may reach operational arrangements with operators of other Administrations. These operational arrangements are then submitted to the operators' respective Administrations for approval. Once approved by both Administrations, the operational arrangements become, or form the basis for, a coordination agreement between the Administrations under the ITU procedures. Since the 2007 Orbit Act Report to Congress, Intelsat has concluded operational arrangements by correspondence with Egypt, Japan, Kingdom of Thailand, the Islamic Republic of Iran, the Republic of Korea, and the United Kingdom. In due course, this process will lead to coordination agreements between the United States and the foreign Administration.

¹⁰¹ *Id.*

¹⁰² *Id.*

Finally, both Inmarsat's and INTELSAT's privatization appears to have had a positive impact on the global marketplace for communications services by ensuring increased competition and increased access. Inmarsat and Intelsat have placed a priority on continued provision of service to all portions of the globe. Additionally, Inmarsat remains committed to its support of global maritime distress and safety services ("GMDSS").¹⁰³ We also note that the ITSO Assembly of Parties continues to maintain that Intelsat should be contractually bound under a Public Service Agreement with the ITSO to ensure continued global connectivity -- particularly to countries dependent on Intelsat's satellite services.¹⁰⁴

V. Summary

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. The Commission will continue to implement and enforce the requirements of the ORBIT Act. On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the ORBIT Act. The Commission will continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.

Attachments:

Comments, April 1, 2008

Comments of Intelsat LLC

Comments of Inmarsat PLC

¹⁰³ See <http://safety.inmarsat.com/default.html?language=EN&textonly=False>. *Inmarsat Finance plc. Offering Circular for 7 5/8% Senior Notes*, January 27, 2004, p. 114.

¹⁰⁴ ITSO Assembly of Parties, Record of Decision of the Thirty-First (Extraordinary) Meeting, Document AP-31-3E, Agenda Item No. 13.1(i). (dated April 6, 2007).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:)
)
Report to Congress Regarding the) IB Docket No. 08-38
Orbit Act)

COMMENTS OF INTELSAT

Intelsat LLC and its affiliated entities (collectively, "Intelsat") hereby respond to the Federal Communications Commission's ("FCC" or "Commission") request for comments in the above referenced proceeding.¹ The Commission seeks comments in order to compile its ninth report to Congress pursuant to Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act" or "Act").²

Intelsat continues to operate as a fully privatized company and its privatization continues to have a positive impact on the global marketplace for communications services. Intelsat – with its fleet of 54 satellites – is a leader in the digital delivery of video content, the transmission of corporate data and the provisioning of government communications solutions.

¹ *International Bureau Information: Report to Congress Regarding the ORBIT Act*, Report No. SPB-225 (Mar. 18, 2008) (Public Notice).

² Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (2004).

Intelsat remains subject to intense competition in the market for communications services – from other providers of satellite services, as well as from terrestrial sources, such as fiber optic cable, broadband-enabled IP applications and terrestrial wireless platforms. Intelsat has responded, and will continue to respond, to these competitive market forces.

Respectfully submitted,

Intelsat LLC

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April 1, 2008

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of)
)
Report to Congress Regarding) IB Docket No. 08-38
the ORBIT Act)

COMMENTS OF INMARSAT PLC

Inmarsat plc ("Inmarsat") submits these Comments in response to the Public Notice inviting input to be reflected in the Commission's progress report to Congress on implementing the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act").¹ The purpose of the ORBIT Act is to "promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing...INTELSAT and Inmarsat."²

Inmarsat converted from an intergovernmental organization ("IGO") to a private company in 1999 in a manner that was ORBIT Act-compliant.³ In June 2005, the Commission found that Inmarsat had satisfied the requirement to effectuate a substantial dilution of former Signatory financial interests in the company.⁴ Just days later, Inmarsat reduced former signatory and foreign government ownership even further, by completing one of the most successful equity IPOs by a satellite services company. Today, Inmarsat's shares are traded on the London Stock

¹ Public Notice, Report No. SPB 225, DA 08-593 (rel. Mar. 18, 2008).

² *Id.* at 1; see also ORBIT Act, Pub. L. No. 106-180, 114 Stat 48, §2 (2000)

³ See *Comsat Corp. d/b/a Comsat Mobile Communications et al.* 16 FCC Rcd 21661 (2001) ("Comsat").

⁴ *Inmarsat Group Holdings Limited, Petition for Declaratory Ruling Pursuant to Section 621(5)(F) of the ORBIT Act*, 20 FCC Rcd 11366 (2005).

Exchange and no former Inmarsat Signatory owns five percent or more of the company and the aggregate ownership by foreign governments is nominal.

Inmarsat, in an effort to respond to aggressive, highly competitive market forces, has continued to invest in new technologies for the diverse mobile satellite service (MSS) customer base. Over the last several years, Inmarsat has invested well over \$1.5 billion in the deployment of its fourth-generation, Inmarsat 4 ("I-4") satellite network, which is today providing innovative MSS services to the United States and globally on one of the most advanced mobile commercial communications satellites now in orbit. Inmarsat expects to launch the third of its fourth generation satellites, the I4F3, in the near future, completing world-wide coverage for our broadband capabilities, including Broadband Global Area Network (BGAN). In addition, Inmarsat is constructing and has sought Commission authorization for a Satellite Access Station in Paumalu, Hawaii to connect user terminal traffic to the public switched network and the Internet.

In order to remain competitive in the dynamic MSS market, Inmarsat's I-4 fleet has been designed and adapted to support a new class of novel IP-based communications, including BGAN service. Using highly portable and easily deployed "notebook sized" antennas that are one-third the size, weight, and price of traditional Inmarsat terminals, BGAN provides voice and broadband service at speeds of almost half a megabit per second. In 2007, Inmarsat launched companion BGAN services for aeronautical and maritime customers, known as SwiftBroadband and FleetBroadband. Inmarsat will introduce world-wide Global Satellite Phone Service (GSPS) over its I4 geostationary fleet with a modernized handset. This device is being optimized to operate over the I-4 network, will support both MSS and GSM service, and is expected to be available in the United States in 2009.

Inmarsat respectfully submits the above information to assist the Commission in preparing its forthcoming report to Congress.

Respectfully submitted,

/s/

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